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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,223	09/17/2003	Jean-Paul Salome	2-1032-214	8466

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DES MOINES, IA 50309-4076

EXAMINER

MONDESI, ROBERT B

ART UNIT PAPER NUMBER

1653

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/666,223	Applicant(s) SALOME ET AL.	
	Examiner Robert B Mondesi	Art Unit 1653	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.  
     4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>September 18, 2002</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to restriction requirement*

Applicants' election with traverse of Invention I, **Claims 1-8** in amendment, filed December 02, 2004 is acknowledged. The traversal is on the ground(s) that pending claim 1 is drawn to "a process for extracting and refining the components of pea flour and moreover the recitation of claim 1 includes a step, wherein the flour is prepared by grinding peas and therefore the process of claim 1 can not be used with wheat flour; therefore inventions I and III are not distinct and also inventions I and II are not distinct since pending **claim 9** is drawn to a device for "extracting and refining the components of pea flour" which can be used in the process of claim 1.

This is not found persuasive because in case of invention I, United states Patent 5,034,227 to Nickel teaches that the method of the invention can be used with different types of legumes such as peas or beans, also on the other hand pea starch can be obtained by a variety of different known methods such as methods presented in Vorse, Kirken and Meuser et al. (all cited in IDS filed December 18, 2003). In regards to the distinctness of inventions I and II, the examiner would like to point out that the applicants themselves admit in claim 9 that the device of the invention, used for extracting and refining pea flour, is also used in a potato starch factory!

Therefore the requirement is still deemed proper and is made FINAL. **Claims 1-13** are pending in this application. **Claims 9-13** are withdrawn from further consideration

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by the Examiner because these Claims are drawn to non-elected inventions. **Claims 1-8** are currently under examination.

***Priority***

The current application filed on September 17, 2003 claims priority to foreign application FRANCE 0211547 filed on September 18, 2002.

***Information Disclosure Statement***

The IDS filed December 18, 2003 has been received and is signed and considered, a copy of the PTO 1449 is attached to the following document.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-8** are rejected under 35 U.S.C. 102(b) as being anticipated by Nickel United States Patent 5,034,227.

Nickel teaches a process for the preparation of a novel protein product or a novel starch product from legume seed which comprises suspending finely ground or powdered legume seed in an aqueous medium to provide an aqueous suspension wherein the pH is within the range of from about 2.0 to about 10.0, subjecting said aqueous suspension to centrifugation to provide an overflow fraction containing a major proportion of proteins and an underflow fraction containing a major proportion of starches (column 1, lines 37-43) and that the legume seed used as starting material for

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the above process may be peas or beans, or a mixture of said peas and beans. A preferred starting material is yellow field peas and suitable varieties of peas are Trapper, Century, Flavo, Victoria and First & Best, while suitable varieties of beans are Diana and Ackerperle.

Nickel teaches further that the starting material in the form of an aqueous suspension containing finely ground or powdered legume seed may be prepared in any manner suitable for, or convenient for, the handling of such legume seed. Thus, for example, the seed, which may or may not have been subjected to a preliminary treatment to reduce the moisture content thereof, may be finely ground, in the dry state, by the use of dry milling equipment and the powder or flour so obtained may then be suspended in an aqueous medium and the mentioned starting material may be cleaned in the usual cleaning equipment and optionally dried at the same time to reduce the moisture content to a figure of about 10% to facilitate the removal of the hulls by means of suitable dehulling equipment, for example commercially available equipment incorporating discs or rollers. At this point, the starting material being prepared is in the form of clean, dehulled seed, optionally having a reduced moisture content, which contains as its major components, starches, proteins, sugars and a certain amount of fiber (column 2 lines 5-17).

It is of importance to note that Nickel states that the preferred pH of the aqueous solution is acidic he does not teach away from higher pHs and mentions It is to be understood that by operating at higher pH ranges, for example in the range of pH

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about 6.5-9.5, the amount of protein in solution in the aqueous suspension tends to vary according to the means and conditions used to obtain and maintain the pH of the aqueous suspension but the process may nevertheless be operated at such high pH ranges (column 3, lines 2-12).

The aqueous suspension obtained from the dry milling procedure or the wet grinding procedure at the desired pH is in the form of an aqueous slurry or fine dispersion which **may be screened or filtered at one or more stages of the processing operation in order to remove fibrous material** (it is important to note here that Nickel does not necessarily teach that this separation of fibrous material need to take place at any particular stage of the process). Furthermore, Nickel teaches such screening may be carried out by passage of the aqueous slurry through a suitable screening device such as a vibratory screen, filter press, a rotary vacuum filter, a centrifugal separator or an ultrafiltration membrane. The former filter and screens, the latter membrane may retain some starches and fibrous material while other starches and proteins pass through and the fibrous material can subsequently be separated from the starches. The screened aqueous suspension, as a slurry or fine dispersion, containing a substantial proportion of proteins in solution, is then subjected to centrifugal action to separate the mixture into a so-called liquid fraction and a solid fraction. A suitable decanter or horizontal type centrifuge, such as a Sharples Pennwalt Series P super decanter centrifuge, or a series of hydroclones, such as a Dorr Oliver hydroclone, may be used. As a result of this centrifugal action, there is obtained a low solids content overflow

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portion, a so-called liquid fraction, containing essentially soluble proteins with some sugars, and a high solids content underflow portion, a so-called solid fraction, containing essentially insoluble starches with some insoluble proteins, and fibrous material.

Nickel teaches that Fraction 10 containing soluble proteins and soluble sugars is subjected to an ultrafiltration treatment in order to separate and thus retain further portion of protein from the soluble sugars (column 10, lines 61-65).


Thus Nickel teaches all the elements of **claims 1-8** and these claims are anticipated under 35 USC 102(b).

### ***Conclusion***

**Claims 1-8** are rejected.

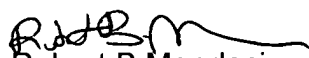
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
ROBERT A. WAX  
PRIMARY EXAMINER  
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert B Mondesi  
Patent Examiner  
Group 1653  
02-15-08